

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:22-cv-0068-BO

YOLANDA IRVING, individually and as the
natural parent and guardian of J.I., JUWAN
HARRINGTON, CYDNEEA
HARRINGTON, KENYA WALTON
individually and as the natural parent and
guardian of R.W., ZIYEL WHITLEY,
DYAMOND WHITLEY, KAMISHA
WHITLEY, NANETTA GRANT as the natural
parent and guardian of Z.G., and
EMANCIPATE NC, INC.,

Plaintiffs,

v.

THE CITY OF RALEIGH, Officer OMAR I.
ABDULLAH, Sergeant WILLIAM ROLFE,
Officer RISHAR PIERRE MONROE, Officer
JULIEN DAVID RATTELADE, and Officer
MEGHAN CAROLINE GAY, Officer DAVID
MEAD, Officer JESUS ORTIZ, Officer KYLE
PERRIN, Officer MICHEAL MOLLERE,
Officer KYLE THOMPSON, Officer
VINCENT DEBONIS, Officer DANIEL
TWIDDY, Officer THOMAS WEBB, Officer
DAVID MCDONALD, Officer DAVID
GARNER, Chief of Police ESTELLA
PATTERSON and City Manager MARCHELL
ADAMS-DAVID, in their official capacities.

Defendants.

**PLAINTIFFS' MOTION TO STRIKE DEPOSITION TESTIMONY IN
DEFENDANTS' REPLY BRIEF**

NOW COME Plaintiffs, by and through undersigned counsel and hereby respectfully move the Court to strike or disregard the deposition testimony attached by SEU Defendants in their reply brief filed in support of their motion to dismiss. Plaintiffs state the following in support of their motion:

1. On October 18, 2022, SEU Defendants filed a motion to dismiss Claim 8 (excessive force) pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 129.
2. Plaintiffs filed a response to Defendants' motion to dismiss on November 22, 2022. ECF No. 142.
3. Defendants filed their reply brief on December 6, 2022. ECF No. 145.
4. Defendants' reply brief included deposition testimony from one Plaintiff, Yolanda Irving. *Id.*
5. This testimony was attached as Exhibit A to Defendants' reply brief. *Id.*
6. Because Defendants' motion challenges the substantive claims of Plaintiffs pursuant to 12(b)(6) attaching deposition testimony is improper.
7. This Court should either strike the testimony or set a summary judgment briefing schedule where the parties are permitted to present evidence on all ten individual Plaintiffs' claims for excessive force.
8. Notably, this Court has scheduled discovery to end on March 3, 2023.
9. Dispositive motions are currently due no later than March 31, 2023.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order striking the deposition testimony attached to Defendants' reply brief and permitting the excessive force claims to be decided after full briefing at summary judgment.

This the 13th day of February 2023

Respectfully,



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Served on all parties: Via ECF